

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 201906483	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/23/2019 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 104	18 Mo. SOL 1/23/2021	EO SOL 9/9/2021	
Date/Time CV Reported Wed, 07/24/2019 3:52 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/24/2019 3:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Ryan Sheehan	26362	955475	WARRSEC
2. POM Phillip Pena	11192	956156	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.POM Phillip Pena	Abuse: Police Officer Phillip Pena damaged § 87(2)(b) property.	§ 87(2)(b)
B.POM Phillip Pena	Abuse: Police Officer Phillip Pena entered § 87(2)(b) in Queens.	§ 87(2)(b)
C.POM Ryan Sheehan	Abuse: Police Officer Ryan Sheehan entered § 87(2)(b) in Queens.	§ 87(2)(b)
D.POM Phillip Pena	Abuse: Police Officer Phillip Pena searched § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Ryan Sheehan	Abuse: Police Officer Ryan Sheehan searched § 87(2)(b) in Queens.	§ 87(2)(b)
F.POM Phillip Pena	Abuse: Police Officer Phillip Pena searched § 87(2)(b) in Queens.	§ 87(2)(b)

Case Summary

On July 24, 2019, § 87(2)(b) called the CCRB and filed this complaint via telephone.

On July 23, 2019, at approximately 4:00 p.m., § 87(2)(b) received a call from her daughter, § 87(2)(b) who stated that officers were outside of § 87(2)(b) apartment and looking for her son, § 87(2)(b). § 87(2)(b) returned home and encountered PO Phillip Pena and PO Ryan Sheehan, both assigned to the Bronx Warrant Section, outside of her apartment, § 87(2)(b) in Queens. § 87(2)(b) observed that the glass window on her apartment door had been shattered (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) allowed PO Pena and PO Sheehan into her apartment (**Allegations B and C: Abuse of Authority**, § 87(2)(g) PO Pena and PO Sheehan searched § 87(2)(b) apartment (**Allegations D and E: Abuse of Authority**, § 87(2)(g) Inside § 87(2)(b) bedroom, PO Pena allegedly opened a dresser drawer, removed a cough medicine bottle, and examined it (**Allegation F: Abuse of Authority**, § 87(2)(g) § 87(2)(b).

PO Pena and Ryan Sheehan were not assigned body-worn cameras during the incident.

§ 87(2)(b) did not receive a summons, and she was not arrested during this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Phillip Pena damaged § 87(2)(b) property.

It is undisputed that § 87(2)(b) encountered PO Pena and PO Sheehan outside of her apartment, located on § 87(2)(b).

§ 87(2)(b) received a call from her daughter, § 87(2)(b) informing her that officers were at her apartment. § 87(2)(b) returned home and spoke to PO Pena in the hallway outside her apartment. § 87(2)(b) saw that the cloudy glass window of her apartment door had been shattered, leaving pieces of broken glass on the floor. The officers explained that they heard someone inside her apartment. PO Pena told § 87(2)(b) that the officers were looking for her son, § 87(2)(b). PO Sheehan was either standing beside or carrying a hammer with 2' long handle and a rubber mallet at the end. PO Sheehan told § 87(2)(b) that he had struck the door once, causing the window to crack. § 87(2)(b) believed the door handle of her door had been struck because the lock was jammed and would not open [Board Review 01].

§ 87(2)(b) did not cooperate with the investigation.

PO Pena testified that with a clenched first, he knocked on the wooden part of the door, causing the glass portion to break. As a result, the glass window had a large hole. PO Pena did not use his sledgehammer on the door [Board Review 02].

PO Sheehan corroborated PO Pena's statement and stated that the damage to the upper right part of the window of the door was sustained after PO Pena began knocking harder with a closed fist on the right wooden part of the door [Board Review 03].

The City Involved Accident Report (UF-18) for July 23, 2020 at § 87(2)(b), in Queens, was prepared by PO Pena. PO Pena describes damage caused to the glass window of the apartment door of § 87(2)(b), which occurred when he knocked on the front door pursuant to warrant #§ 87(2)(b) [Board Review 04].

Although § 87(2)(b) stated that PO Sheehan told her that he had struck her door with a hammer once, PO Pena and PO Sheehan provided consistent testimony indicating that PO Pena was the officer who damaged § 87(2)(b) apartment door. The UF-18 report prepared by PO Pena indicates that PO Pena damaged § 87(2)(b) door. As such, this allegation was pled solely against PO Pena.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Phillip Pena entered § 87(2)(b), in Queens.

Allegation (C) Abuse of Authority: Police Officer Ryan Sheehan entered § 87(2)(b), in Queens.

Allegation (D) Abuse of Authority: Police Officer Phillip Pena searched § 87(2)(b), in Queens.

Allegation (E) Abuse of Authority: Police Officer Ryan Sheehan searched § 87(2)(b), in Queens.

It is undisputed that PO Pena and PO Sheehan encountered § 87(2)(b) outside of her apartment and would later enter it in search of § 87(2)(b).

§ 87(2)(b) stated that PO Pena told her that the officers were looking for § 87(2)(b) and showed her a document that contained a photograph of § 87(2)(b). § 87(2)(b) had difficulty opening the door to her apartment. § 87(2)(b) tried to use her key, but the door would not open. PO Sheehan asked if he could try opening the door. PO Sheehan tried using § 87(2)(b) keys to open it. After a few minutes, PO Sheehan succeeded in doing so. § 87(2)(b) entered her apartment and invited PO Pena and PO Sheehan inside the apartment to look around [Board Review 01].

§ 87(2)(b) followed the officers as they entered the living room and went toward the rooms on the right. § 87(2)(b) apartment is a railroad-style apartment in which the rooms lead into one another. § 87(2)(b) and the officers walked through § 87(2)(b) bedroom, through § 87(2)(b) former bedroom, and the bedroom of her brother, § 87(2)(b) (last name unknown). At this point, the officers asked § 87(2)(b) about a television that was turned on and to tell § 87(2)(b) to turn himself in. § 87(2)(b) had a bedroom in her apartment, but he no longer lives with her and that he is not listed as a tenant on the lease. She did not specify when he last lived at her apartment [Board Review 01].

PO Pena testified that he had obtained potential locations for § 87(2)(b) via the Criminal Justice Agency (CJA) and Das Lite databases. PO Pena did not recall when he accessed these databases, but he had been looking for § 87(2)(b) since April 2019. PO Pena had encountered § 87(2)(b) at her apartment in a previous investigation, and she confirmed that § 87(2)(b) lived at her apartment [Board Review 02].

Entries from the warrant section's case management system indicate that warrant number § 87(2)(b) had been issued for § 87(2)(b) and his warrant was assigned to PO Pena on § 87(2)(b) [Board Review 05]. § 87(2)(b) testified that when she met the officers outside of her apartment, they told her that they were looking for § 87(2)(b) and showed her a document that

contained a photograph of § 87(2)(b) [Board Review 01]. The Department Advocate's Office of the NYPD confirmed that the warrant was vacated on § 87(2)(b). Despite our attempts, the investigation was unable to obtain a copy of the warrant [Board Review 06]. While the CCRB was unable to obtain a copy of the warrant issued for § 87(2)(b) as documented above, the preponderance of the evidence supports that an active warrant for his apprehension existed at the time of this incident.

Among the entries made within warrant section's case management system, follow-up # 3, dated April 16, 2019, indicates that PO Pena conducted a search of the Criminal Justice Agency (CJA) to determine that § 87(2)(b) had an alternative address at § 87(2)(b). In addition, in follow-up # 6, dated June 4, 2019, § 87(2)(b) ex-girlfriend, § 87(2)(b) informed PO Pena that § 87(2)(b) may be staying at his mother's house [Board Review 05].

As PO Pena and PO Sheehan stood in front of § 87(2)(b) frosted-glass apartment door, PO Pena heard loud noises coming from a television inside the apartment. PO Pena knocked on the door several times, and an unidentified woman spoke to PO Pena from behind § 87(2)(b) apartment door. PO Pena saw through the frosted window the woman's head and the shape of her body. PO Pena could not provide a physical description of the woman, but she had a woman's voice. PO Pena told the woman that he was a police officer, and he a valid warrant and needed to check the apartment for § 87(2)(b). The woman told PO Pena, "Give me a second." PO Pena saw the woman walk away. She continued to speak, but PO Pena could not make out what she was saying. PO Pena observed through the cloudy glass part of the door glare coming from the kitchen area, where a window seemed to be opening. He could not clearly see the window opening. PO Pena saw sunlight coming from the kitchen area. PO Pena's prior investigation at the apartment led him to believe that the sunlight was coming from the kitchen. PO Pena did not recall what PO Sheehan was doing at this time because he was focused on what was happening inside the apartment [Board Review 02].

PO Sheehan corroborated PO Pena's testimony that a woman was inside of § 87(2)(b) apartment. When PO Pena asked § 87(2)(b) to identify an unknown female individual in her apartment, she replied that no one was home [Board Review 03].

§ 87(2)(b) tried to open the door but was unable to do so. PO Pena asked § 87(2)(b) if he could open the door so that she would not get hurt by the broken glass. Either PO Pena or PO Sheehan reached through the broken glass window and unlocked the door from inside. § 87(2)(b) did not tell the officers at any point to stop unlocking the door [Board Review 02].

PO Sheehan testified that either PO Pena or PO Sheehan asked for her key to check inside since the officers had a warrant. § 87(2)(b) gave the officers permission to go inside. After five minutes – the lock mechanism appeared faulty – PO Sheehan managed to open the door. § 87(2)(b) did not express any concern that the officers were opening her door or tried to prevent them from doing so [Board Review 03].

PO Sheehan and PO Pena entered § 87(2)(b) apartment to look for any individuals inside. PO Sheehan went toward the kitchen on the left and checked the window for the fire escape. He examined a lower cabinet because he has found people hiding inside cabinets in previous investigations. PO Sheehan checked bathroom, and he then went to the living room and looked under the couch. He proceeded to the first bedroom toward the right and checked the closet. PO Sheehan believed this room belonged to § 87(2)(b) because there were shoes and objects that likely belonged to § 87(2)(b). PO Sheehan found a wardrobe with two drawers on the bottom. PO Sheehan opened the doors of the wardrobe, which looked like it could conceal a person. PO

Sheehan went toward the rear bedroom and looked under the bed and couch. Both PO Sheehan and PO Pena looked into the aforementioned areas twice. § 87(2)(b) was inside the apartment, but PO Sheehan did not recall whether she was accompanying the officers as they made their way through the rooms [Board Review 03].

According to New York State Criminal Procedure Law 120.80, a valid arrest or bench warrant allows officers to enter a residence to search for and arrest the subject of the warrant only if they reasonably believe it to be the suspect's residence and they reasonably believe the suspect is present at the time they enter [Board Review 07].

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Phillip Pena searched § 87(2)(b), in Queens.

§ 87(2)(b) stated that after the officers walked through her bedroom, § 87(2)(b) bedroom, and her brother § 87(2)(b) bedroom, they all began walking back toward § 87(2)(b) room. At this time, § 87(2)(b) granddaughter, entered and stood by the doorway leading into § 87(2)(b) room. PO Pena and § 87(2)(b) now stood inside § 87(2)(b) room while PO Sheehan remained inside Eddie's room. PO Sheehan, who was by the doorway between the two rooms, brushed aside the fabric covering of a plastic, buildable closet, opening it about two to three inches. The closet was approximately 5' tall and 2' wide. Inside § 87(2)(b) room, PO Pena fully opened a 7' tall and 3' wide closet and commented on expensive sneakers inside. Then PO Pena approached a mirror dresser, pulled open the top right drawer, and stated that § 87(2)(b) clothes were inside. PO Pena reached into the drawer, retrieved a cough medicine bottle that had been face down, and asked § 87(2)(b) to identify it. § 87(2)(b) told PO Pena to turn it around, which PO Pena did. The bottle had § 87(2)(b) name on it. PO Pena placed the bottle into the drawer and closed it [Board Review 01].

§ 87(2)(b) granddaughter who entered the apartment as the officers were looking into § 87(2)(b) room, did not cooperate with the investigation.

PO Pena testified that he looked into § 87(2)(b) bedroom, where he looked under the bed and into the closet. PO Pena did not recall seeing a drawer with a mirror or opening any drawers in § 87(2)(b) bedroom. He did not recall retrieving a bottle of medicine from a drawer. He did not observe any medication or recall speaking to § 87(2)(b) about medication [Board Review 02].

